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Royal Selangor Club v Devagi a/p Karpeya

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HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO R1–16–19 OF 2003
LAU BEE LAN J
13 JULY 2009

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Civil Procedure — Jurisdiction — High Court — Whether appellant had right to appeal to High Court where the amount in dispute less than RM10,000 — Employment Act 1955 ss 13(2) & 77(1) — Courts of Judicature Act 1964 s 28(1)

D

Labour Law — Employment — Termination — Wilful breach — Whether employer liable to pay termination benefits to employee whose employment was terminated for wilful breach — Employment Act 1955 ss 13(2) & 77(1) — Employment (Termination and Lay-off Benefits) Regulations 1980 reg 4(1)(a), (b) & (c)

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Devagi a/p Karpeya, the respondent was employed by Royal Selangor Club, the appellant. The respondent's employment with the appellant was terminated by the latter under s 13(2) of the Employment Act 1955 ('the Act') on the grounds that she had breached her contract of employment by being continuously absent from work for more than two consecutive working days without prior leave from the appellant employer under s 15(2) of the Act. The appellant claimed for salary in lieu of notice and termination benefits. After an inquiry conducted under s 69 of the Act, the Assistant Director of Labour ('the labour officer') decided that the appellant was justified in terminating the services of the respondent under s 13(2) of the Act on the grounds that she had breached her contract but that the appellant was liable to pay the respondent termination benefits of RM8,660.73 under reg 4(1)(c) of the Employment (Termination and Lay-off Benefits) Regulations 1980 ('the Regulations'). This was the appellant's appeal under s 77(1) of the Act against that part of the decision of the labour officer that the appellant was liable to pay termination benefits. The respondent submitted that since her termination from service did not fall within the exceptions in reg 4(1)(a), (b) or (c) of the Regulations, the general provision in reg 4(1) was applicable and she was entitled to terminations benefits. The issues before this court were whether the appellant had the right to appeal to the High Court where the amount in dispute was less than RM10,000 and whether the labour officer had erred in law when he held that although the respondent's services

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were terminated by the appellant for her wilful breach, the respondent was entitled to termination benefits. A

Held, allowing the appeal with costs:

(1) Section 28(1) of the Courts of Judicature Act 1964 ('the CJA') does not allow appeals to the High Court where the amount in dispute is RM10,000 or less 'subject to any other written law'. The written law in question in this case would be the Employment Act 1955 and in particular s 77(1) of the Act which gives an express right of appeal to the appellant and does not place any limitation on the value of the appeal. In the event that s 28(1) of the CJA does apply to the instant case, there are questions of law which arise in this appeal as is evident from the memorandum of appeal which support the appellant's right to appeal (see paras 3 – 4). B C

(2) An inquiry is not required for a termination of employment under s 13(2) of the Act. As such there was no merit in the respondent's argument that there must be a domestic inquiry (see para 8). D

(3) In the present case, the appellant employer had terminated the contract of employment as a result of the wilful breach by the employee respondent. As such it would be contrary to the spirit and intent of the Act to pay termination benefits to an employee who wilfully breached her contract of employment. Further, the Act was enacted for the purpose of providing fairness for both the employer and employee and that being the case it would be unreasonable and illogical for the respondent to gain a benefit from having breached her contract of employment (see paras 10 – 11). E F

[Bahasa Malaysia summary

Devagi a/p Karpeya, responden, diambil bekerja oleh Royal Selangor Club, perayu. Responden telah diberhentikan kerja oleh perayu di bawah s 13(2) Akta Pekerjaan 1955 ('Akta') atas alasan-alasan bahawa dia telah melanggar kontrak pekerjaannya apabila tidak hadir bekerja lebih dari dua hari berturut-turut tanpa kebenaran daripada perayu di bawah s 15(2) Akta. Perayu menuntut gaji sebagai ganti notis dan faedah-faedah pemberhentian. Setelah suatu siasatan yang dilakukan di bawah s 69 Akta, Timbalan Pengarah Buruh ('pegawai buruh') telah memutuskan bahawa perayu sewajarnya memberhentikan perkhidmatan responden di bawah s 13(2) Akta atas alasan-alasan bahawa dia telah melanggar kontrak tetapi perayu harus membayar kepada responden faedah-faedah pemberhentian sebanyak RM8,660.73 di bawah peraturan 4(1)(c) Peraturan-Peraturan Kerja (Faedah-Faedah Penamatan dan Rentikerja Sentara) 1980 ('Peraturan-Peraturan'). Ini merupakan rayuan perayu di bawah s 77(1) Akta terhadap bahagian ini dalam keputusan pegawai buruh bahawa perayu G H I

A bertanggungan membayar faedah-faedah pemberhentian. Responden berhujah bahawa disebabkan pemberhentiannya daripada perkhidmatan tersebut tidak terangkum dalam pengecualian-pengecualian dalam peraturan 4(1)(a), (b) atau (c) Peraturan-Peraturan tersebut, peruntukan am dalam peraturan 4(1) terpakai dan dia berhak kepada faedah-faedah pemberhentian tersebut. Isu-isu di hadapan mahkamah ini ialah sama ada perayu berhak untuk merayu ke Mahkamah Tinggi di mana jumlah yang dipertikaikan adalah kurang daripada RM10,000 dan sama ada pegawai buruh tersebut khilaf dari segi undang-undang apabila memutuskan walaupun perkhidmatan responden diberhentikan oleh perayu disebabkan pelanggaran yang disengajakan, responden berhak kepada faedah-faedah pemberhentian.

Diputuskan, membenarkan rayuan dengan kos:

(1) Seksyen 28(1) Akta Mahkamah Kehakiman 1964 ('AMK') tidak membenarkan rayuan ke Mahkamah Tinggi jika jumlah yang dipertikaikan kurang daripada RM10,000 'tertakluk kepada mana-mana undang-undang bertulis yang lain'. Undang-undang bertulis yang berkaitan kes ini adalah Akta Pekerjaan 1955 dan khasnya s 77(1) Akta yang memberikan hak yang jelas kepada perayu untuk merayu dan tidak meletakkan had nilai rayuan tersebut. Jika s 28(1) AMK tidak terpakai dalam kes ini, terdapat beberapa persoalan undang-undang yang berbangkit dalam rayuan ini seperti dalam memorandum rayuan yang menyokong hak perayu untuk merayu (lihat perenggan 3 – 4).

(2) Suatu siasatan tidak diperlukan untuk pemberhentian pekerjaan di bawah s 13(2) Akta. Maka, tiada merit dalam hujah responden yang menyatakan mesti ada siasatan dalaman (lihat perenggan 8).

(3) Dalam kes ini, majikan perayu telah memberhentikan kontrak pekerjaannya kerana pelanggaran yang disengajakan oleh responden. Maka, adalah bercanggah dengan maksud dan tujuan Akta untuk membayar faedah-faedah kepada pekerja yang sengaja melanggar kontrak pekerjaannya. Selanjutnya, Akta tersebut digubal bagi tujuan memberikan keadilan kepada kedua-dua majikan dan pekerja, dan oleh itu, adalah tidak wajar dan tidak logik bagi responden mendapat faedah setelah melanggar kontrak pekerjaannya (lihat perenggan 10 – 11).]

Notes

For cases on High Court jurisdiction, see 2(1) *Mallal's Digest* (2007 Reissue, 4th Ed) paras 4438–4510.

For cases on termination of employment, see 8(1) *Mallal's Digest* (2010 Reissue, 4th Ed) paras 1198–1204.

Cases referred to

Kuala Lumpur Kepong Berhad (Ladang Sungei Jernih) v Subramaniam a/l Sinnappan & Ors [1997] MLJU 357 (folld)

Lim Poh Poh v Menteri Sumber Manusia, Malaysia [1998] MLJU 122; [1998] 1 LNS 440, HC (folld)

Neoh Choo Ee & Co Sdn Bhd v Vasalamany Govindasamy & Anor [1996] MLJU 183; [2004] 3 CLJ 321, HC (folld)

Legislation referred to

Courts of Judicature Act 1964 s 28(1)

Employment Act 1955 ss 13(2), 14(1), 15(2), 60F(2), 69, 77(1)

Employment (Termination and Lay-off Benefits) Regulations 1980 reg 4, 4(1), 4(1)(a), (b), (c)

J Adeline (Zul Rafique & Partners) for the appellant.
VK Raj (P Kuppusamy & Co) for the respondent.

Lau Bee Lan J:

[1] The appellant ('employer') has appealed pursuant to s 77(1) of the Employment Act 1955 ('the Act') against part of the decision of the Assistant Director of Labour ('the labour officer') given on 5 December 2002 and made on an inquiry conducted under s 69 of the Act ie that the appellant is liable to pay the respondent termination benefits of RM8,660.73 after having concluded that the appellant was justified in terminating the services of the respondent under s 13(2) of the Act on the ground that the respondent had breached her contract of employment under s 15(2) of the Act read together with s 60F(2) of the same.

[2] Learned counsel for the appellant drew to the court's attention two High Court cases on the interpretation of s 77(1) of the Act:

(i) *Neoh Choo Ee & Co Sdn Bhd v Vasalamany Govindasamy & Anor* [1996] MLJU 183; and

(ii) *Kuala Lumpur Kepong Berhad (Ladang Sungei Jernih) v Subramaniam a/l Sinnappan & Ors* [1997] MLJU 357.

[3] I adopt the position taken by the learned judge in *Kuala Lumpur Kepong Berhad (Ladang Sungei Jernih)* that s 77(1) of the Act gives an express right of appeal to the appellant and does not place any limitation on the value of the appeal and thus s 28(1) of the Courts of Judicature Act 1964 ('CJA') does

not apply. This view is fortified by the opening words in s 28(1) of the CJA which states 'Subject to any other written law' preceding the other part of the provision 'no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less except on a question of law'. The written law in question is the Employment Act and to reiterate there is no restriction on the quantum of the subject matter.

[4] In the event I am wrong and s 28(1) of the CJA is applicable to this appeal, I agree as submitted by learned counsel for the appellant there are questions of law which arises in this appeal as is evident from the memorandum of appeal. Support for this position taken is the case of *Neoh Choo Ee & Co Sdn Bhd v Vasalamany Govindasamy & Anor* [1996] MLJU 183; [2004] 3 CLJ 321 at p 330 when the Court of Appeal stated '[section 28(1)] does not say that the notice of appeal should expressly state the questions of law. That points of law will in the usual way be taken in the memorandum of appeal and it is that document that the High Court should have resort'.

[5] As correctly pointed out on the appellant's behalf, the labour officer in his findings found:

(a) the respondent has breached her contract by continuously being absent from work for more than two consecutive working days (s 15(2) of the Act), read together with s 60F(2) of the Act, which requires the respondent to inform the appellant of her sick leave within 48 hours;

(b) in the circumstances, the appellant was justified in terminating the services of the respondent under s 13(2) of the Act for the breach of her contract under s 15(2) of the Act;

(c) hence, the respondent was not entitled to her claim for salary in lieu of notice; and

(d) since the respondent's contract was terminated under s 13(2) of the Act, the respondent was entitled to be paid termination benefits. In this regard, the labour officer further held that:

(i) this was not a case of termination of employment after due inquiry; or upon attaining the age of retirement; or a voluntary termination; and

(ii) in the circumstances, reg 4(1)(c) of the Employment (Termination and Lay-off Benefits) Regulations 1980 ('the Regulations') is

applicable.
(p 16 of the appeal record).

[6] Learned counsel for the respondent submitted the decision was correct on three grounds:

(a) since there was no domestic inquiry conducted against the respondent, s 14(1) of the Act is applicable;

(b) s 14(1) of the Act guarantees due inquiry to employees who are protected under the Act. Since there was no due inquiry conducted, the respondent was entitled to termination benefits under reg 4 of the Regulations; and

(c) the labour officer had clearly misstated the applicable regulation, which ought to have been reg 4(1)(b) of the Regulations (instead of reg 4(1)(c)).

[7] At the hearing of the appeal on 29 May 2009, the respondent conceded on the point that the finding by the labour officer in terminating the services of the respondent under s 13(2) of the Act read with s 15(2) of the same was correct. As alluded to earlier the appeal of the appellant is only with regard to that part of the labour officer's decision that the appellant is liable to pay termination benefits to the respondent. Since there is no cross-appeal by the respondent, it means that the decision of the labour officer that the appellant was right in terminating the services of the respondent under s 13(2) of the Act read with s 15(2) of the same remains unchallenged.

[8] I agree with learned counsel for the appellant that an inquiry is not required for a termination of employment under s 13(2) of the Act. This is evident from the express wordings of the provision itself which reads 'Either party to a contract of service may terminate such contract of service without notice in the event of any wilful breach by the other party of a condition of the contract of service'. I also find support from the case of *Lim Poh Poh v Menteri Sumber Manusia, Malaysia* [1998] MLJU 122; [1998] 1 LNS 440, where the applicant's employment as a waitress was terminated by Hotel Concorde without notice under s 13(2) of the Act on the ground that she had breached her contract of employment for being continuously absent from work for more than two consecutive working days without prior leave from his employer under s 15(2) of the Act (the same ground as in this instant appeal). Nik Hashim J (now Federal Court judge) said at p 8 'Pemohon komplain beliau tidak diberi peluang melalui satu inquiri sebelum dia ditamatkan perkhidmatannya. Dalam hubungan ini, pihak saya dengan

A hormat, bersetuju dengan peguam kanan persekutuan bagi pihak Menteri, bahawa pemohon tidak berhak kepada inquiri kerana penamatan telah dibuat di bawah s 13(2) dan bukan di bawah s 14(1), akibat daripada pemecahan kontrak perkhidmatan oleh pemohon di bawah s 15(2) Akta Pekerjaan 1955. Ini jelas dinyatakan dalam surat penamatan perkhidmatan 'LPP2' kepada
B pemohon'. I agree with His Lordship's view. Thus I find there is no merit in the respondent's argument that there must be a domestic inquiry.

[9] The respondent submitted that since the respondent's termination from service neither falls within the exceptions in reg 4(1)(a) or (b) or (c) of the
C Regulations, the general provision in reg 4(1) is applicable and the respondent is entitled to the termination benefits.

[10] With regret I cannot agree with the respondent's argument. The
D relevant provision relied on by the labour officer is reg 4(1)(c) of the Regulations. I agree with the appellant's submission 'The proviso in reg 4(1)(c) is only applicable when *the employee* terminates the contract of employment as a result of the *wilful breach by the employer*. This is because reg 4(1)(c) specifically states the termination of the employment contract
E must be done voluntarily by the employee. Hence, only if the employee terminates the contract voluntarily because the employer had wilfully breached a condition of the contract (s 13(2) of the Act), would the employee be entitled to the termination benefits. *On the present facts*, it was *the employer (ie the appellant) who terminated the contract of employment as a result of the*
F *wilful breach by the employee (ie the respondent)*'. I agree with the appellant that it is contrary to the spirit and intent of the Act to pay termination benefits to employees who wilfully breach their contract of employment with their employers.

G **[11]** Further, the Act was enacted for the purpose of providing fairness for both the employer and employee as is evident from the 'The Proceedings of the Legislative Council of the Federation of Malaya on the Employment Bill 1953 (March 1955 to June 1955)' at p 616. That being the case it would be most unreasonable, illogical and against the true spirit and intent of the Act
H for the respondent, who having breached her contract of employment to gain a benefit. Therefore, I find the labour officer has erred in law when he held that although the respondent's services were terminated by the appellant under s 13(2) of the Act for her wilful breach, the respondent was entitled to termination benefits of RM8,660.73 on the ground that reg 4(1)(c) of the
I Regulations is applicable.

[12] For the given reasons, the appeal is allowed with costs to be taxed unless otherwise agreed.

Appeal allowed with costs.

Reported by Kohila Nesan